



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

MEMO ENDORSED

April 19, 2024

VIA ECF

Hon. Dale E. Ho
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *Abdiev v. Garland, et al.*, No. 23 Civ. 8091 (DEH)

Dear Judge Ho:

This Office represents the government in the above-referenced action. I write respectfully, to request that the initial pretrial conference, currently scheduled for May 14, 2024, and any related discovery deadlines, be adjourned until after the Court has rendered a decision on the government's pending motion to dismiss.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court has discretion to stay discovery for good cause shown. *Spencer Trask Software & Info. Servs., LLC v. RPost Int'l Ltd.*, 206 F.R.D. 367, 368 (S.D.N.Y. 2002). "Good cause may be shown where a party has filed a dispositive motion, the stay is for a short period of time, and the opposing party will not be prejudiced by the stay." *Id.* In determining whether to issue such a stay, courts have looked to: (1) the strength of the dispositive motion that is the basis for the stay, (2) the breadth of discovery sought, and (3) the burden in responding to it. *Id.* All three factors weigh in favor of granting this relief.

First, the government contends that its motion to dismiss provides a strong basis to dispose of the entire action. *See Spencer Trask*, 206 F.R.D. at 368 (granting a stay of discovery where "defendants do appear to have substantial arguments for dismissal of many, if not all, of the claims asserted"). Second, because no discovery has yet been sought by any party, a stay of discovery would not unduly delay the action or prejudice any party. Third, engaging in discovery pending resolution of the motion to dismiss would be unduly burdensome for the government, as no discovery is needed to resolve the government's motion, which seeks to dismiss the entirety of plaintiff's complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See, e.g., Boelter v. Hearst Commc'ns, Inc.*, No. 15 Civ. 3934 (AT), 2016 WL 361554, at *5 (S.D.N.Y. Jan. 28, 2016) (staying discovery where defendant had moved to dismiss entire complaint pursuant to Rules 12(b)(1) and 12(b)(6) "because succeeding on each argument alone may warrant dismissal of Plaintiff's entire complaint [and so] ordering discovery to proceed at this time would result in an excessive burden on Defendant"). In its motion papers, the government raised "threshold challenges to the Court's subject matter jurisdiction" with respect to the plaintiff's mandamus claim, which warrants a stay of discovery pending the outcome of the government's motion. *See, e.g., Renois v. WVMF Funding, LLC*, No. 20 Civ. 9281 (LTS) (DF), 2021 WL 1721818, at *1 (S.D.N.Y. Apr. 30, 2021) (granting stay of discovery pending jurisdictional motion). Moreover, as the government noted in its moving papers, discovery is not appropriate in a case asserting claims

under the Administrative Procedure Act. *See* ECF No. 38 at 3 n.4 (citing *Comprehensive Cmty. Dev. Corp. v. Sebelius*, 890 F. Supp. 2d 305, 312 (S.D.N.Y. 2012) (“[I]n such review [of agency action under the APA], the standard discovery tools of civil litigation . . . do not apply.”)).

Counsel for plaintiff consents to this request.

We thank the Court for its consideration.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney

By: /s/ Jessica F. Rosenbaum
JESSICA F. ROSENBAUM
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
Telephone: (212) 637-2777
Email: jessica.rosenbaum@usdoj.gov

Application **GRANTED**.

It is hereby **ORDERED** that the initial pretrial conference scheduled for May 14, 2024 is **CANCELLED**.
Discovery is stayed pending resolution of the Motion to Dismiss. *See* ECF No. 28.

The Clerk of Court is respectfully requested to close ECF No. 39.

SO ORDERED.



Dale E. Ho
United States District Judge
Dated: April 19, 2024
New York, New York